



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

October 16, 2003

Ms. Renee Mauzy
General Counsel
Department of Information Resources
300 West 15th Street
Suite 1300
Austin, Texas 78701

OR2003-7379

Dear Ms. Mauzy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 192269.

The Texas Department of Information Resources (the "department") received a request for the minutes and tapes of all department board meetings for calendar year 2003. The requestor also seeks "to review any documentation related to State of Texas purchases of pirated software in the last five years." You inform us that the department has made arrangements to allow the requestor to listen to the tapes of all open sessions of 2003 board meetings, but claim that the certified agenda of the August 27, 2003 executive session of the department board is protected under sections 552.101 and 551.104 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that you have only submitted to our office for review a copy of a certified agenda. You have not submitted to this office, nor do you inform us that you have released to the requestor, the remaining requested information. Therefore, to the extent it exists, you must release such information to the requestor if you have not already done so. *See* Gov't Code §§ 552.006, .301(a), .302.

Section 552.101 of the Government Code excepts from disclosure information deemed confidential by law. Section 551.104(c) of the Government Code provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying

only under a court order issued under Subsection (b)(3)." (Emphasis added.) Thus, such information cannot be released to a member of the public in response to an open records request. See Open Records Decision No. 495 (1988). The department must withhold the submitted information from the requestor under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Michael A. Pearle". The signature is written in a cursive, flowing style.

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/jh

Ref: ID# 192269

c: Mr. Lucius Lomax
823B Church Street
Galveston, Texas 77550
(w/o enclosure)